IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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:: JUDGMENT ::

State of Rajasthan & Anr. Vs. Sushil Kumar

S.B. CIVIL MISC. APPEAL NO.579/1994.

Against the award dated 07.07.1994 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.350/1989.

Date of Judgment :: 6th October 2006

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.L. Bhati, Addl. Government Advocate for the appellants.
Mr. Dilip Kawadia, for the claimant-respondent.

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BY THE COURT:

This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the owners of the vehicle involved in the accident questioning the award dated 07.07.1994 made by the Motor Accidents Claims Tribunal, Udaipur on its findings on the responsibility towards accident and so also on quantification of compensation awarded to the injured claimant in the sum of Rs.50,000/-. The claimant-respondent has, on the other hand, submitted cross-objections seeking enhancement.

The fact that the accident did occur on 25.06.1989 at about 5.30 p.m. at a turn in front of Meera Girls College, Udaipur and near the campus of Bank of India in collision of a moped, bearing registration No. RPJ 2312 the injured-claimant was riding at, and a matador van, bearing registration No. RPJ 448 belonging to the appellants and being driven by one Iqbal Khan is not in dispute. However, according to the claimant-respondent, he was a pillion-rider on the said moped that was being driven by his cousin Surendra Kumar Choudhary; but according to the appellants, the claimant was the sole rider on the said moped. The accident did occur on a road junction with both the vehicles taking turn; moped to its left while coming from west to east and the matador van to its right coming from east to west and both of them converged on the collision point; and both the sides have imputed the responsibility towards accident due to negligence and omission of care by the other.

It is also not in dispute that the claimant sustained injuries in the accident and was immediately removed to the General Hospital at Udaipur. The claimant has further established by evidence that he sustained head injury and developed haemiplegia on the right side and was taken to Ahmedabad for further treatment on 28.06.1989 and he was discharged from the hospital at Ahmedabad on 12.07.1989.

Stating the facts relating to the accident, injury and treatment, the claimant-respondent claimed compensation in the sum of Rs.3,50,000/- with the submissions that he was 23 years in age and was earning Rs.1,500/- per month in a business of printing press; that though his life has been saved by extensive treatment expenditure but the head injury suffered by him has resulted in semi-paralysis and the disability shall continue for long. While filing the claim application on 29.08.1989 the claimant stated the expenditure incurred till then in the sum of Rs.35,000/- on treatment, Rs.10,000/- on transportation, Rs.3,000/- on attendants, another Rs.3,000/- on special diets, Rs.9,000/- on loss of income for six months and also claimed Rs.2,70,000/- for future loss of earning and Rs.20,000/- towards physical pain and mental agony.

In the claim application, the driver of matador van Iqbal Khan was arrayed as non-applicant No.1 but the claimant gave up the proceedings against him by moving an application on 21.11.1990 with the submissions that despite efforts the said driver had not been served and the applicant did not wish to continue the proceedings against him. However, the record shows that though the said driver Iqbal Khan was not served and fresh notices for his service were not filed but then, on 03.07.1990, a Vakalatnama was filed on his behalf by Mr.S.S.Rijvi and Mrs. Hamida Rijvi, Advocates; and on that

very date ex parte proceedings against the non-applicants Nos.2 and 3 were set aside and all the non-applicants were granted time to file reply by 28.08.1990 and were further granted time to file reply by 21.11.1990. On this date of 21.11.1990, as noticed, the claimant dropped the proceedings against the driver Iqbal Khan with the submissions that he had not been served. Be that as it may, the non-applicants No.2 and 3 submitted reply with the specific assertion that the claimant was not the pillion rider but he was the lone driver of the moped. It has been submitted on the basis of the information stated by the driver Iqbal Khan and the officer of the Department, Nahar Singh that when they were proceeding with a song and drama team sent by the Information and Broadcasting Ministry of the Government of India towards Jhadol in the said departmental vehicle RPJ 448, on the circle near Meera Girls School the moped rider hit against the van on the right hand side and the accident was caused by his own negligence and mistake and yet he was admitted to the hospital and a report of the incident as desired by the police was made on 26.06.1989.

On the pleadings of the parties, following issues were framed:

> "1- आया दिनांक 25-6-89 को विपक्षी नं0 1 श्री इकबाल खा के द्वारा वाहन नं0 आर 0 पी0 जे0 448 को गफलत व लापरवाही से चलाने के कारण श्री

सुशील कुमार दुर्घटनाग्रस्त हुवा और उसके शरीर पर साधारण व गंभीर चोटे पहुंची ?

2-आया प्रार्थी क्लेम में बताई गई राशि रूपया 3,50,000/-या अन्य कोई राशि प्रतिकार में विपक्षीगण से पाने का अधिकारी है ?यदि हॉ तो कितनी व किस किस से ?

3- आया विपक्षी नं0 2-3 के द्वारा जवाब दावे में उठाई गई आपत्तियों के आधार पर विपक्षी नं० 2 व 3 का कोई दायित्व नहीं है ?

4- दादरसी ?"

In oral evidence, the claimant Sushil Kumar examined himself as AW-1, his father Roshanlal as AW-2 and his cousin Surendra Kumar Choudhary as AW-3. On behalf of non-applicants one Krishan Gopal Arora, Officer-incharge of the case was examined as NAW-1 and Nahar Singh Rathore, occupant of the matador van at the time of accident was examined as NAW-2. The claimant also produced documentary evidence relating to the police investigation, his injury, treatment and other related medical reports and so also the bills of expenditure.

After hearing the parties, learned Judge of the Tribunal disbelieved the case set up by the non-applicants of the claimant alone being the rider on the moped and having caused accident for his own mistake; and decided issue No.1 in favour of the claimant. Taking up issue Nos.2 and 3 together, learned Judge of the Tribunal referred to the

evidence produced by the claimant and observed that no certificate regarding permanent disablement was produced; and that the certificate Ex.73 dated 21.07.1989 stated about duration of his disability for three months. The learned Judge put the estimate on monthly income of the claimant at Rs.1,000/- and found him entitled for Rs.6,000/- towards loss of earning during the treatment period. The learned Judge found nothing wrong about father of the claimant removing him to Ahmedabad for better treatment and then allowed a lump sum of Rs.50,000/- as compensation with the following observations:-

> "अत: स्थिति यह बनती है कि लगभग 5000/- उपचार में खर्चा हुवा। तीन हजार रूपये पोष्टिक आहार पर खर्चा हुवा और लगभग 15 हजार रूपये अहमदाबाद लाने ले जाने में खर्चा हुवा लगभग 6 हजार रूपये आय की क्षति हुई और चोटो के कारण जो शारीरिक मानसिक कष्ट प्रार्थी ने भोगा है उसे भी अनदेखा नहीं किया जा सकता और साथ ऐसे अन्य खर्चों को भी नकारा नहीं जा सकता। अत: सभी तथ्यों पर विचार करते हुवे मैं सभी मदों की बाबत एक मुश्त राशि 50,000/-(पचास हजार रूपया)दिलाया जाना न्यायोचित पाता हूँ।जिसकी अदायगी का उतरदायित्व विपक्षी नं0 2 व 3 का संयुक्त रूप से होगा। प्रार्थी उक्त राशि पर आवेदन की तिथि से वसूली तक 12 प्रतिशत वार्षिक की दर से ब्याज पाने का अधिकारी होगा। राशि दो माह में अदा नहीं होने पर प्रार्थी बकाया राशि पर 15 प्रतिशत वार्षिक की दर से ब्याज पाने का अधिकारी होगा।"

Assailing the award learned Additional Government Advocate Mr. B.L.Bhati appearing for the appellants referred to the evidence on record and contended

that the accident occurred for the sole negligence and fault of the claimant-respondent and the Tribunal has been seriously in error in deciding issue No.1 against the appellants. Learned Additional Government Advocate further submitted that the award made by the Tribunal remains highly excessive and submitted that in the first place there was no necessity of removing the injured claimant to Ahmedabad and such expenditure incurred at the sweet will of his father cannot form a component of reasonable loss to be considered for awarding compensation; similarly the alleged expenditure on large number of persons visiting Ahmedabad and even repeated visits by the claimant to Ahmedabad cannot be considered towards the quantum of just compensation. Stipulation regarding enhancement in the rate of interest in default of payment within two months has also been assailed as being wholly without jurisdiction. Per Contra, learned counsel for the claimant-respondent Mr.Dilip Kawadia submitted that the driver of the van has not been produced in evidence and an adverse inference is required to be drawn against the appellants and the finding on issue No.1 calls for no interference. Learned counsel pressed the cross-objections for enhancement of compensation with the submissions that the Tribunal has merely allowed Rs.50,000/- as lump sum whereas this much of amount has been that of the bills produced, as observed by the

Tribunal itself. Learned counsel submitted that in view of the injuries resulting in haemiplegia and speech disorder, substantial compensation in relation to future loss of income and so also towards loss of amenities of life ought to have been allowed and, therefore, the award made by the Tribunal requires modification with suitable upward revision.

Having given a thoughtful consideration to the rival submissions and having scanned through the entire record, this Court is of opinion that this appeal deserves to be allowed in part with reduction in the amount of compensation awarded and setting aside of stipulation regarding penal interest; and the cross-objections deserve to be rejected.

So far the question regarding liability towards accident is concerned, the father of the claimant AW-2 has specifically pointed out that his son, the claimant, did not know driving of the moped. The claimant has stated that he was the pillion rider on the moped that was driven by his cousin. The said cousin Surendra has appeared in evidence as AW-3 and has testified that he was driving the moped at the time of accident. The very same fact has been stated in the FIR (Ex.54) lodged by Surendra Kumar at 7:00 p.m. on the date of accident. Admittedly, the accident occurred at about 5:30 p.m. and there appears no reason to believe that the story of driving by Surendra Kumar was concocted within

an hour and half of the accident. Though there is some discrepancy in the statement of AW-3 Surendra Kumar and the recitals of FIR (Ex. 54) as he has stated want of knowledge in his statement as to who actually removed the injured claimant to hospital and his having reached an hour thereafter; but in the FIR he had stated having accompanied the claimant to the hospital in the same matador van. There is yet another discrepancy when the claimant has stated that the elder sister-in-law of his aunt removed him to hospital after the accident. However, only on the basis of such discrepancies, it cannot be concluded that the injured-claimant was the lone rider of the moped.

The non-applicants have not been able to establish this fact of driving of the moped by the claimant alone by cogent evidence; and the witnesses produced by the non-applicants in support of their case do not inspire confidence. NAW-1, Krishna Gopal Arora, the Administrative Officer in the Family Welfare Department, Udaipur has deposed as officer in-charge of the case and has alleged having reached the site after the accident. His statements are neither of any value nor of any assistance. The other witness, NAW-2, Nahar Singh Rathore has stated himself to be the Deputy District Extension Officer and an occupant of the matador van at the time of accident. He has alleged the

accident to have occurred for the mistake of the lone rider of the moped but then has made all confusing statements in his cross-examination. According to the said witness NAW-2, he had lodged the FIR and police obtained his signatures but then has alleged that by lodging FIR he meant that the police inquired from him and has admitted that he did not lodge any report with the police. He has pointed out that Iqbal Khan, driver was removed from services; then has stated that the said driver was taken on deputation from Kastoorba Matra Mandir and was sent back; and that no inquiry was held against Iqbal Khan in relation to this accident. This witness has admitted that the accident did occur at a turn and then has alleged that the parents of the injured reached the site. The father of claimant, AW-2 Roshan Lal has pointed out that he was at Mavli at the time of accident and received information on telephone and when he reached Udaipur, the claimant was already admitted to the hospital. The haphazard statements and narrations made by the NAW-2 do not inspire confidence and cannot be taken in proof of any fact regarding responsibility towards the accident.

In such state of record, merely on the basis of some doubt created on the testimony of the claimant and his witnesses for some incongruity in their stand, it does not appear safe to conclude that the claimant alone was driving

the moped. Admittedly, the accident occurred at a road junction and it appears from the site plan (Ex.50) that the two vehicles converged on the junction point from opposite directions. In the scenario when the matador van was in the process of taking a turn towards its right, more caution was required on the part of its driver and preponderance of probabilities leans against the non-applicants and it appears that the accident occurred for omission of caution on the part of the van driver. As noticed above, the claimant voluntarily dropped the proceedings against the van driver, non-applicant No.1 but the fact remains that the non-applicants have not taken care to produce him in evidence; and in the overall circumstances of the case, an adverse inference could be drawn against them on that count. In the net result, the evidence as produced on record and as omitted to be produced leads to the conclusion that the issue No.1 has rightly been decided against the non-applicants and they remain liable for the loss suffered by the claimant.

Coming to the question of the quantum of compensation, it is noticed from the injury report (Ex.51) that the claimant sustained an injury on the right eyebrow and forehead; and from the X-ray report (Ex.52) that there was no bony injury. However, the medical jurist had reported to the Station House Officer of Police Station, Bhopalpura, Udaipur

(vide Ex.53) that the injury sustained by the claimant was dangerous to life and that he was unconscious up to 28.06.1989 and then had gone to Ahmedabad for treatment; that he develop haemiplegia on the right side and was unable to speak. It may be pointed out that this report Ex.53 bears the date of 27.06.1989 that is obviously incorrect because it refers to the events of 28.06.1989. Be that as it may, it is borne out from the endorsement made on the bed-head ticket of the claimant (Ex.59) that on 28.06.1989 he was discharged from the General Hospital, Udaipur at request and the father of the claimant specifically noted that he wanted to remove him to Ahmedabad at his own risk.

The case summary of treatment at Ahmedabad (Ex.69) shows that the level of consciousness of the claimant deteriorated on 28.06.1989; and at the time of admission (at Ahmedabad) he was semi-conscious. However, the Civil Hospital of Ahmedabad has reported that the patient was treated conservatively and he improved and at the time of discharge he was conscious, could speak few words, he was advised medicines and to follow up with neurosurgery OPD after a month. The Associate Professor of Orthopedic Department of the General Hospital at Udaipur has certified on 21.07.1989 (Ex. 73) thus:

> "It is certified that Shri Sushil Kumar s/o Shri Roshan Lal Aged 23 years is case of Head Injury with Haemiplegia Right Side. He is unable to work, write & perform his routine work for 3 months."

There is no other evidence on record to show that the after-effects of the injury were of permanent or enduring character. A comprehension of the overall evidence on record makes it clear that due to the injury sustained in the accident, the claimant-respondent did develop haemiplegia on the right side but such effect of the injury got defused slowly and he was discharged from Civil Hospital, Ahmedabad on 12.07.1989 with a comparatively improved condition. The Doctor examining him on 21.07.1989 at Udaipur found him unable to work for three months. Obviously, it has not been a case of any sort of permanent disablement; and the claimant suffered a temporary disorder that did disappear gradually. Therefore, the claim for any compensation towards permanent partial disablement cannot be countenanced.

So far the claim for treatment expenditure is concerned, learned counsel for the claimant-respondent has referred to an observation made by the learned Judge of the Tribunal that the claimant had produced medical bills Ex.1 to Ex.42 for Rs.50,000/- and has submitted that allowing only of Rs.5,000/- towards expenditure was not justified. The

submissions are not correct because the observation relied upon is itself not correct. Having examined all the bills of expenditure produced by the claimant it is noticed that the medical bills Ex.1 to16, 18, 20, 22 to 24, 26 to 28, 32, 34 and 37 of the period from 25.06.1989 to 12.07.1989 are in the sum of Rs.5059.85; the bills Ex. 17, 21, 25, 31, 33, 36 and 38 in all in the sum of Rs.137.50 are towards photostat copies; bill Ex.19 for Rs.24/- is undated; and the bills Ex.41 dated 28.04.1991, Ex.42 dated 03.09.1991 and Ex.43 dated 06.03.1992 respectively in the sum of Rs.47.50, 37.50 and 37.50 relate to a period much beyond the date of accident and treatment. Be that as it may, even if all these bills are added up, they account for expenditure in the sum of Rs.5343.95 and not beyond.

So far the expenses towards transportation and attendants are concerned, the receipt Ex.29 issued by one Vishnu Kumar of Surat (Gujarat) is in the sum of Rs.4,000/- for a vehicle GCG 9765 from 28.06.1989 to 13.07.1989 for taking some luggage and family members of the claimant to Ahmedabad; and the receipt Ex.39 for Rs.1,500/- has been issued by one Amrit Lal Kothari (without particulars of his address) for a vehicle RSY 6432 for a trip from Udaipur to Ahmedabad from 10.08.1989 to 14.08.1989. Other receipts Ex. 40, 44, 45 and 47 for transportation to Ahmedabad relate to

the period of May 1990, April 1991, January 1990 and December 1990 respectively. Obviously, the later receipts Ex. 40, 44, 45 and 47 cannot be counted towards genuine transportation expenditure in this case. Then, Ex.30 is a statement in the sum of Rs.2,928/- prepared by the father of the claimant stating sundry expenditure on traveling, lodging, boarding of the claimant and family members during the treatment period and Ex.35 is a receipt of guest house dated 13.07.1989 in the sum of Rs.480/-. The claimant has categorically stated that his parents, uncles and cousin all accompanied him to Ahmedabad in train only; and that two persons came by a car of his uncle. The expenditure statement prepared by the father of the claimant (Ex. 30) also states about train tickets for six people (Rs. 222/-) including the claimant for journey to Ahmedabad on 28.06.1989. Obviously, the assertion as made by the father of the claimant in his statement before the Tribunal about transporting the claimant (to Ahmedabad) by car is not correct. The claim as sought to be made for 14 persons visiting Ahmedabad at the time of treatment and then of repeated trips to Ahmedabad in the months of January 1990, May 1990, December 1990 and April 1991 cannot be considered towards the component of reasonable expenditure on transportation to be allowed as loss to the claimant. So far family members, friends, relatives and

well wishers are concerned, the number of persons accompanying the claimant or visiting Ahmedabad is not at all a question of debate and any number of persons could have been there for voluntary help or anxiety or etiquette. However, for the purpose of considering loss allowable as compensation for a vehicular accident victim only a reasonable loss in respect of requisite attendant(s) could be allowed and not beyond. Moreover, in the present case, the medical evidence on record shows that claimant had improved at the time of his discharge from Ahmedabad on 12.07.1987 and was advised to visit neurosurgery OPD after a month. There is no further evidence on record to justify the claim for repeated visits to Ahmedabad by a car-taxi as sought to be claimed with reference to the later receipts Ex.40, 44, 45 and 47. Such claim for transportation expenses deserve to be disallowed. On the facts available on record and looking to the period of incident i.e. of the year 1989, it appears appropriate that transportation expenses for the claimant and attendants be allowed in the sum of Rs. 2,000/- and not beyond.

It may be pointed out that, allowable or disallowable, all the bills and receipts Ex.1 to Ex.47 even when summed up together do not stand beyond Rs.24,401.95. Obviously, the learned Judge of the Tribunal made an incorrect cursory observation about the amount of these bills/receipts to

be of Rs.50,000/-. As noticed above, a part of the expenditure shown under the said bills and receipts cannot be allowed.

In the overall circumstances of the case, this Court is of opinion that looking to the bills of expenditure produced and providing for another component towards lost bills, a sum of Rs.5,500/- could be allowed towards medical expenditure; and another sum of Rs.2,000/- could be allowed towards transportation. Yet further could be allowed Rs.2,000/- for the attendants and Rs.2,000/- towards special diets. Another Rs.4,500/- could be allowed towards three months' loss of income on the basis of the income stated by the claimant at Rs.1,500/- per month. In this manner, the claimant could be allowed a sum of Rs.16,000/- maximum towards pecuniary loss in this case. Having regard to the circumstances of the case, another sum of Rs.5,000/- could be allowed towards one grievous injury. There is no other evidence on record about loss of future earning capacity due to the injury in question.

It has been stated in the evidence that the claimant was maintaining comparatively better health before the accident and was not a stammerer but due to the deformities now developed, his marriage prospects suffered a set back. Though the claimant has not been able to show permanent disablement; and the alleged deformities have not been established to be of permanent character, but looking to

the agony suffered by the claimant in his young age of about 23 years the claimant may be allowed another sum of Rs.15,000/- towards non-pecuniary loss.

The claimant is, therefore, entitled for compensation in the sum of Rs. 36,000/- and not beyond. The learned Judge of Tribunal was not justified in making some reference to some part of evidence and then abruptly arriving at the figure of Rs. 50,000/- to be awarded as compensation in this case.

It needs emphasis that while granting compensation in a vehicular accident case, it is ordinarily expected of the Tribunal to award compensation on some rationale, some basis and some principles; and to scan through the record before making any observation; and to specify the basis for arriving at a figure that is considered to be of just compensation. May be in a given case, lump sum award could be held justified having regard to the overall circumstances of the case but it cannot be adopted as a short cut in every case that award be made only in lump sum. The cursory approach of the learned Judge of the Tribunal in the present case has obviously resulted in making perverse observations and then in making a haphazard award; and such an approach is strongly disapproved.

The Tribunal has allowed interest on the award amount at the rate of 12% per annum with further stipulation that interest shall be payable at the rate of 15% per annum if payment be not made within two months. When rate of interest has been allowed at 12% from the date of filing of claim application, there was no reason or occasion for making such stipulation of awarding interest at the rate of 15% per annum in default of payment within two months. Such penal rate of interest is neither envisaged by law nor appears justified; and deserves to be set aside.

It is true that the award made by a Motor Accidents Claims Tribunal deserves interference in appeal when the same is either too low or highly excessive than that of a just compensation. The amount of compensation allowable to the claimant in the present case is in the sum of Rs.36,000/- whereas the Tribunal has made the award in the sum of Rs.50,000/-. In the context of the period this case pertains to, i.e. of the year 1989, the difference is material one and the ratio-proportion of the amount awarded by the Tribunal and the amount of just compensation allowable is not insignificant to be ignored. Moreover, the manner of arriving at the figure of compensation and then awarding of penal rate of interest by the Tribunal cannot be approved. In this view of

the matter, the award made by the Tribunal needs interference and deserves modification with downward revision.

As a result of the discussion aforesaid:

(a) The appeal succeeds and is partly allowed to the extent indicated above; the impugned award is modified and the claimant is held entitled to compensation in the sum of Rs. 36,000/- in place of the amount of Rs. 50,000/- awarded by the Tribunal. The claimant shall be entitled to interest on the award amount at the rate of 12% per annum from the date of filing of claim application and the stipulation regarding penal rate of interest at 15% per annum shall stand annulled;

(b) Cross-objections for enhancement of the amount of compensation, obviously, fail and are rejected;

(c) Parties shall bear their own costs throughout.

(DINESH MAHESHWARI), J.

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